

You have Questions We have Answers

ESTATES

In this Brochure the term "Estate" refers to the net worth of a person at their death. The Estate is the sum of a person's assets, - legal rights, interests and entitlements to property of any kind - less all liabilities.

Whether or not Probate, Letters of Administration or Letters of Administration with Will Annexed will be required, will depend upon the assets of the deceased and their manner of ownership.

What is Probate?

Probate in Victoria is applied for through the Supreme Court of Victoria in its Probate jurisdiction and in simple terms, is the acknowledgement that the Executor appointed in the Will has proven the Will and is therefore granted Probate to undertake the legal process of administering the estate of a deceased person, by resolving all claims and distributing the deceased person's property under the valid will.

What is Letters of Administration and who can apply?

If a person has died intestate ie: without a Will, instead of applying for Probate of the Will, an Application for Letters of Administration of the Estate may be required.

In the event that the deceased did not leave a Will, then the next of kin would be entitled to apply for a grant of Letters of Administration. The next of kin sequence would firstly be a surviving spouse or defacto partner, then children, then grandchildren. If there is no living spouse, children or grandchildren, it would revert up to parents and then out to siblings, then to distant family such as nephews & nieces, then grandparents, then uncles and aunts. The distribution of an intestate's estate is also based on next of kin, however there is a scale applied.

What is Letters of Administration with the Will annexed?

Where a sole executor dies before the Willmaker, or if the sole appointed executor refuses to act, Letters of Administration with the Will annexed are granted. In the instance of the last executor to obtain Probate dying, the executor of that dead executor also becomes the executor for the deceased.

This is why it is very important to appoint more than one executor in your will and to update your Will should any one of your appointed executors predecease you.

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After someone's death, when might a grant of Probate, Letters of Administration or Letters of Administration with Will Annexed be required?

Assuming that there are no challenges to the Estate, the requirement for a grant of Probate or Administration will depend upon the assets of the Estate. Real Estate owned as sole proprietor or tenants in common would require Probate and so do shares. Bank accounts with generally more than \$20,000 will require Probate, although each bank has different requirements.

When would a grant of Probate or Letters of Administration NOT be required?

One such simple and common scenario would be a husband and wife who own their home and all other assets as joint proprietors, ie: joint bank accounts and joint shares. The surviving proprietor would automatically be entitled by law to own the whole of the once jointly owned asset. Sure there would still be quite a bit of paperwork to be done, but a grant of Probate or Administration would not be required.

Superannuation – is it part of an Estate?

Generally not, however if you have requested with your Superannuation Fund that the beneficiary of your Super interest be your Estate, then yes the Fund will pay your superannuation interest to your estate and it will be distributed in accordance with your Will.

If you have made a binding nomination as to the beneficiary of your superannuation fund then the Fund Trustees have no discretion and will disburse your superannuation interest in accordance with your binding nomination, however be aware that binding nominations must be regularly reviewed as some do have expiry dates. In this instance your Superannuation is not regarded as part of your Estate and will not be listed on any inventory of assets and liabilities for a grant of Probate or Administration.

If you have made a general nomination (or **non** binding nomination) as to the beneficiary of your super fund then the Fund Trustees have discretion as to where your super money will go. Irrelevant of who you have nominated, it is likely that they will require that person or persons to complete detailed paperwork setting forth the family structure and details of the deceased. They are trying to ascertain who was financially dependent upon the deceased and dependent upon the outcome of their enquiries, they may disburse your Super funds differently from what you had in mind.

Again in this instance your Superannuation is disbursed by the Fund Trustees and is not regarded as part of your Estate.

However if you have nominated your estate as your superannuation beneficiary or if the Fund Trustees decide it is all too hard and pay the super funds to the estate, then yes your superannuation will form part of your estate.

What is the Process to Administer an Estate?

In a straightforward case scenario of a wife predeceasing a husband and all joint assets including real estate having therefore previously been transferred to the husband and the husband having made an updated Will, upon the husband's death his executor/s would:

Place an advertisement advertising their intention to make an application for a Grant of Probate after 14 days. During that time the Probate Application is completed, including a full inventory of assets and liabilities.

The Application is lodged at the Supreme Court Probate Office and approximately 2 weeks later the Probate Parchment is received in the mail.

A certified copy of the parchment and copious amounts of paperwork are then completed and sent to organisations holding estate money, accounts are closed and money is paid to the estate.

An Application by Legal Personal Representative Form is used to transfer the real estate to the Executors via the Land Titles Office.

After the appointment of an Estate Agent the real estate is sold once settlement is effected the sale proceeds are also paid to the Estate.

Accounting advice is usually required to obtain Taxation advice on the deceased's personal tax returns and also on any possible estate taxation requirements.

Once all of the assets have been turned into cash (or transferred to a beneficiary under the provisions of the Will) and all of the estate debts are paid, the balance of the Estate money is then disbursed in accordance with the provisions of the Will. Beneficiaries should sign a Deed of Release indemnifying the executors in relation to the Estate.

We can Help!

Please contact the friendly Chinka (HEP) Steel Team in order to discuss your individual concerns or requirements for all Estate and Estate Planning matters.